

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-504
)	
Pinnacle Towers Inc.)	NAL/Acct. No.200232560020
Owner of Antenna Structure #1053157 in Des)	
Moines, Iowa)	FRN 0006-1561-11
Sarasota, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 22, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Pinnacle Towers Inc. ("Pinnacle"), owner of antenna structure #1053157, apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Section 17.50 of the Commission's Rules ("Rules").¹ Specifically, we find Pinnacle Towers Inc. apparently liable for failure to clean and repaint its antenna structure to maintain good visibility.

II. BACKGROUND

2. On June 24, 2002, an agent of the Commission's Kansas City Field Office inspected Pinnacle's antenna structure registration number 1053157 located in Des Moines, Iowa. At the time of inspection, black cabling attached to the outside of the lower half to two-thirds of the structure covered the painted metal tower reducing visibility of the structure.

III. DISCUSSION

3. Antenna structure registration #1053157, owned and registered to Pinnacle, specifies lighting and painting for this structure that includes requirements that the structure be painted with alternating aviation orange and white bands. Section 17.50 of the Rules requires antenna structures requiring painting be cleaned or repainted as necessary to maintain good visibility. The antenna structure owner is responsible for maintaining the structure's painting.² On June 24, 2002, Pinnacle's antenna structure #1053157 had black cabling on the tower face obscuring the orange and white paint and causing the structure to have an overall dark appearance on the lower half to two-thirds of the structure.

4. Pinnacle has a history of non-compliance with the Commission's antenna structure painting

¹ 47 C.F.R. § 17.50.

² See 47 C.F.R. § 17.6(a).

requirements on other Pinnacle-owned antenna structures. The Commission issued to Pinnacle three Notices of Violation (“NOV”) for violating antenna structure painting requirements on other Pinnacle antenna structures on January 11, 2001, February 1, 2001, and March 16, 2001. All three NOV’s were issued for violation of Section 17.50 of the Rules due to cabling attached to the antenna structure that obscured the structure’s required obstruction markings.

5. Based on the evidence before us, we find Pinnacle willfully³ and repeatedly⁴ violated Section 17.50 of the Rules by failing to repaint the antenna structure in accordance with the painting specifications associated with antenna structure registration #1053157.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to comply with prescribed lighting and marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record, including Pinnacle’s history of similar violations, and applying the factors listed above, an increase in the base forfeiture amount is warranted. Therefore, this case warrants a forfeiture of \$20,000.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Pinnacle Towers Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean and repaint its antenna structure to maintain good visibility.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Pinnacle Towers Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

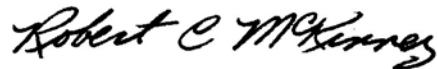
order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Pinnacle Towers Inc., 301 N. Cattlemen Rd, 3rd Floor, Sarasota, Florida 34232.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Robert C. McKinney". The signature is written in a cursive, flowing style.

Robert C. McKinney
Kansas City Office, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.